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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2079/2011

Views adopted by the Committee at its 113th session (16 March–2 April 2015)

Submitted by:	Sapardurdy Khadzhiev (represented by counsel, Timur Misrikhanov)
Alleged victim:	The author
State party:	Turkmenistan
Date of communication:	27 May 2009 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 August 2011 (not issued in a document form)
Date of adoption of Views:	1 April 2015
Subject matter:	Habeas corpus; unfair trial; torture
Substantive issues:	Arbitrary detention; right to a fair trial; prohibition of torture, cruel and inhuman treatment; protection against unlawful interference with one's privacy
Procedural issue:	none
Articles of the Covenant:	7; 9, para. 1; 10, para. 1; 14, paras. 1 and 3 (e) and (g); 17, para. 1
Article of the Optional Protocol:	2

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (113th session)

concerning

Communication No. 2079/2011*

Submitted by:	Sapardurdy Khadzhiev (represented by counsel, Timur Misrikhanov)
Alleged victim:	The author
State party:	Turkmenistan
Date of communication:	27 May 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 April 2015,

Having concluded its consideration of communication No. 2079/2011, submitted to the Human Rights Committee by Sapardurdy Khadzhiev, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Sapardurdy Khadzhiev, a Turkmen national born in 1959. He claims to be a victim of a violation, by Turkmenistan, of his rights under article 7; article 9, paragraph 1; article 10, paragraph 1; article 14, paragraphs 1 and 3 (e) and (g); and article 17, paragraph 1, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Turkmenistan on 1 August 1997. The author is represented by counsel, Timur Misrikhanov.

The facts as submitted by the author

2.1 On 16 June 2006, Sapardurdy Khadzhiev was unlawfully apprehended by officials of the Investigations Unit of the Ministry of National Security of Turkmenistan and taken to the Ministry detention centre. He claims that his arrest was officially recorded only on 18

* The following members of the Committee participated in the examination of the present communication: Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

June 2006, three days after he was detained, in violation of the provisions of the Criminal Procedure Code of Turkmenistan.

2.2 Mr. Khadzhiev further claims that on 21 June 2006, he was charged with a crime and allowed to meet with a lawyer for the first time, five days since his initial apprehension, in violation of the provisions of the Criminal Procedure Code. During the first five days in detention, his family was not informed about his whereabouts. As a consequence, during that time, his family and relatives were extremely worried about him and looked for him in different law enforcement agencies, but did not receive any information.

2.3 The author submits that he was tortured and otherwise mistreated while in detention, with the aim of forcing him to confess guilt. He submits that 11 people were held in one cell, with an area of only six square metres. His relatives were not allowed to bring him food or any other personal items; he did not have access to water; and the temperature in the cell was about 50 degrees Celsius. He was also denied food and access to medical assistance.

2.4 Mr. Khadzhiev claims that he did not commit any crime, and that, in fact, the real reason for his arrest was his active participation in the work of non-governmental organizations and his activities as a human rights defender. He also assisted international journalists with the preparation of their news articles about social life in Turkmenistan. His elder sister was, at that time, working for Radio Liberty; his brother was an opposition activist, and his brother's wife was also a human rights defender. The author submits that, for those reasons, the Turkmen authorities were following his work as a human rights defender long before his arrest, and waited for an appropriate occasion to arrest him.

2.5 The author submits that he was charged with conspiracy to commit the illegal purchase, sale, storage, transportation, transfer and carrying of firearms, ammunition, explosives and explosive devices for a group of individuals, which is proscribed by article 287, paragraph 2, of the Criminal Code of Turkmenistan. He claims that, even before he was charged, the news media on television and in the newspapers had accused him of espionage. Moreover, he and his relatives were accused of "aiding and abetting foreign intelligence services". The investigator in charge of his case ordered him to confess his guilt on television and to publicly denounce his brother (an opposition figure) and his sister (a journalist).

2.6 The author claims that the investigators could not establish his guilt as they had no evidence against him. The witnesses for the prosecution did not and could not provide any statements that would incriminate the author. The defence witnesses were not informed of the date and time of the court hearings, and were not questioned during the pretrial investigation. Although the court hearings should have been open to the public, nobody was allowed to attend. The author submits that his family, relatives as well as representatives of diplomatic missions requested to attend the court hearing but were refused access. The author himself and his lawyer were subjected to intense pressure with the aim of obtaining a confession of guilt for crimes that he did not commit.

2.7 On 25 August 2006, the author was sentenced to seven years' imprisonment. While in prison, the torture and mistreatment continued. He submits that, at the time of submission of the communication to the Committee, he was still denied food, water and medical assistance. He also claims that he was given psychotropic drugs against his will. For the first two years of his imprisonment, he was held incommunicado — his family and relatives did not know his whereabouts and he was denied the right to see them in prison or exchange correspondence with them. During that time, he tried numerous times to submit complaints to different State institutions, including the Office of the Prosecutor and the Office of the President of Turkmenistan, but all his pleas and appeals were ignored.

2.8 The author further submits that, because he is in prison, he cannot obtain any documents relating to the pretrial investigation and subsequent court hearing, nor does he have any copies of the trial transcript, his appeals and complaints. He further claims that all his correspondence, both incoming and outgoing, is intercepted and censored by the prison administration.[1]

2.9 The author submits that the State party should cease persecuting, release him immediately, and compensate him and his family for the material and moral damages the have suffered in the context of his unlawful arrest, trial and conviction, as well as the torture he was subjected to by officials of the State party.

The complaint

3.1 The author claims that by subjecting him to torture and inhuman and degrading conditions of detention and imprisonment, the State party violated his rights under articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights.

3.2 The author also submits that the State party violated his rights under article 9, paragraph 1, of the Covenant, as he was unlawfully apprehended and detained for three days, without his relatives being informed of his detention.

3.3 Furthermore, the author claims that the State party violated his right to a fair and public hearing under article 14, paragraph 1, of the Covenant. His motions for the court to call defence witnesses were rejected and his lawyer was put under pressure to make him confess his guilt, in violation of article 14, paragraph 3 (e) and (g), of the Covenant.

3.4 Finally, the author claims that his rights under article 17 of the Covenant were violated, as the State party had interfered with his correspondence with his family and relatives and, during first two years of his imprisonment, his family did not know about his whereabouts and he could not communicate with them.

State party's observations on merits

4.1 On 6 January 2012, the State party submitted its observations on the merits of the present communication. The State party claims that, in 2002, Sapardurdy Khadzhiev was sentenced to nine years' imprisonment further to under article 292 of the Criminal Code of Turkmenistan, for possession of drugs with the intention of selling them. He was released in 2003 at the discretion of the President of Turkmenistan, under the Clemency Act. On 23 June 2006, he was again arrested and charged with an offence relating to possession of weapons. On 25 August 2006, the author was sentenced to seven years' imprisonment by the Ashgabat City Court.[2]

4.2 The State party submits that Mr. Khadzhiev was placed in a "specialized correctional institution, BK-K/6, in the town of Akdash in the Balkan region of Turkmenistan. The penitentiary records show that, while he was in the institution, he received 11 visits from his relatives, and received food parcels on 15 occasions. Furthermore, he sought the health services of the penitentiary institution on six occasions. According to the State party, his health is "satisfactory", without further details, and he "enjoys all the rights and opportunities provided for persons in his category".

[1] On 17 January 2012, the Committee requested the State party to provide documents relating to this case, such as copies of the decision by the Office of the Prosecutor and the Ashgabat City Court, transcripts of the trial and any other documents pertaining to the case of Sapardurdy Khadzhiev.

[2] In an additional submission dated 11 June 2012, the State party provided excerpts from its Criminal Code, more specifically, the text of articles 185, 220, 228, 287 and 292.

4.3 The State party further claims that the information provided by the author about "unlawful detention" and "misconduct" on the part of police officers has not been confirmed.

Author's comments on the State party's observations on the merits

5.1 On 9 April 2012, Mr. Khadzhiev submitted his comments on the State party's observations on the merits of the communication. He noted that instead of providing specific responses, the State party tried to focus on unimportant facts. For example, he claims that he was first accused of espionage, but afterwards, he was charged and convicted of being in possession of several bullet cartridges. The author reiterates that the State party organized his persecution because of his political views and his relatives, who are well-known opposition members.

5.2 The author submits that the State party did not honour the Committee's request for documents relating to his case, and reiterates that he himself does not have access to those documents. He adds that it was due to the pressure by the international community that he was first allowed to see his relatives, but that was only at the end of August 2007. The State party's claim about the number of visits he was allowed to receive from relatives does not correspond to the reality. After submitting the present complaint to the Committee, the author was able to meet with his relatives only once. In addition, his relatives were able to give him food only three times. Since 2007 and for four years, the author was able to use the medical services only two times, despite his complaints about heart problems and issues with internal organs.

5.3 The author also submits that his right to receive and send correspondence and have access to newspapers, magazines and television is still being violated by the prison administration. His relatives are still subjected to psychological pressure aimed at getting them to stop complaining to international organizations and to provide the State party with a letter to the effect that they have free access to the author.[3]

5.4 On 6 July 2012, commenting on the State party's submission of excerpts from the Criminal Code of Turkmenistan, the author reiterates his position and claims that the State party purposefully avoided answering the substantive issues raised in the communication. He further claims that the law enforcement agencies did not have any evidence of his guilt and that he is currently being held unlawfully.[4]

Further submissions from the State party

6.1 By note verbale of 24 September 2012, the State party submits that according to article 433 of the Criminal Procedure Code of Turkmenistan, the convicted person is provided with the copy of his sentence "no later than five days" after the pronouncement of the conviction by the court. The sentence that was handed down to Mr. Khadzhiev was based on law and he subsequently received a copy of it.[5]

6.2 On 18 March 2013, the State party reiterates that all convicts in correctional facilities are provided with "adequate food and clean water" and have access to medical services. The State party further submits that, on 15 February 2013, the President of

[3] On 28 April 2012, the Committee, acting through its Special Rapporteur on New Communications and Special Measures, requested the State party to abstain from "any acts of pressure, intimidation or reprisal against the author and his relatives" made in connection with the present communication.

[4] The counsel for the author confirmed the author's release in his letter dated 12 December 2013, however, he noted that the author was pardoned only three months prior to his normal release date.

[5] The State party does not provide any other details regarding this issue.

Turkmenistan issued a pardon with regard to Sapardurdy Khadzhiev. Based on the pardon, Mr. Khadzhiev was released from prison.[6]

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 With regard to the exhaustion of domestic remedies, the Committee notes that the State party informed it that the Supreme Court of Turkmenistan had rejected the author's appeal on 20 September 2006. The State party thus does not challenge the admissibility of the communication on that basis. In the circumstances, the Committee finds that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

7.4 With regard to the alleged violation of article 14, paragraphs 1 and 3 (e), of the Covenant, the Committee notes that the State party has not specifically refuted the author's allegations. The Committee considers, however, that the information on file regarding those claims is very limited. It notes, for example, that the author has not specified which witnesses for the defence were prevented from testifying during the court hearings. Similarly, he has not indicated whether or not he was brought before a judge to assess the legality of his detention. Accordingly, and in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate those particular claims for the purposes of admissibility. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

7.5 The Committee considers that the author's remaining claims raising issues under article 7; article 9, paragraph 1; article 10, paragraph 1; and article 17, paragraph 1, of the Covenant have been sufficiently substantiated for the purposes of admissibility. It therefore declares that part of the communication admissible and proceeds to its examination on the merits.

Consideration of merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes, first of all, the author's claims regarding the torture and ill-treatment to which he was subjected following his arrest and his claim that both his lawyer and himself were put under pressure in an attempt to force him to confess his guilt for crimes that he did not commit. It also notes that the State party has not provided specific observations regarding the author's claims of torture and mistreatment, but has merely

[6] In an additional submission dated 17 March 2014, the State party repeats its claim regarding the author's release based on the presidential pardon. The State party also submits that the author's appeal was considered by the Supreme Court of Turkmenistan, which rejected the author's claims on 20 September 2006.

contended, without any other information or evidence in substantiation, that the "use of misconduct" against him has not been confirmed.

8.3 The Committee recalls that the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to the relevant information.[7] It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate, in good faith, all allegations of violations of the Covenant made against it and its representatives, and to provide the Committee with the information available to it. In cases where the author has submitted allegations to the State party that are corroborated by credible evidence, and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider the author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary from the State party.[8]

8.4 The Committee further recalls that the State party is responsible for the security of all persons held in detention and that, when there are allegations of torture and mistreatment, it is incumbent on the State party to produce evidence refuting the author's allegations. Moreover, once a complaint about ill-treatment contrary to the provisions of article 7 of the Covenant has been filed, a State party must investigate it promptly and impartially. Where investigations reveal violations of certain Covenant rights, the State party must ensure that those responsible are brought to justice.[9]

8.5 The Committee also notes that, despite its repeated requests to obtain documents pertaining to the present communication, the State party has failed to produce them. The State party has not provided any information as to whether an inquiry was undertaken by the authorities, in the context of both the criminal investigation and the present communication, to address the detailed and specific allegations advanced by the author regarding his alleged ill-treatment aimed at obtaining confessions under coercion. Moreover, the State party has failed to provide the Committee with the transcripts of the trial and the copies of the author's complaints to the Office of the Prosecutor's and to the Ashgabat City Court, despite having been specifically requested to do so by the Committee. In those circumstances, and in the absence of information about the conduct of any "prompt and impartial" investigation regarding the author's torture claims, the Committee decides to give due weight to the author's sufficiently substantiated allegations. Accordingly, it concludes that the facts, as submitted, reveal a violation of the author's rights under article 7 and article 14, paragraph 3 (g), of the International Covenant on Civil and Political Rights.

8.6 The Committee further notes the author's claims that his rights under article 9, paragraph 1, were also violated as he was unlawfully detained for three days, from 16 to 18 June 2006, in violation of the provisions of the Criminal Procedure Code of Turkmenistan. He was held in detention until 18 June 2006 without being able to initiate any form of legal process through which his apprehension and the lawfulness of his detention could be challenged and without his relatives being informed of his whereabouts. In the absence of

[7] Communications No. 1422/2005, *El Hassy* v. *Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.7; No. 1297/2004, *Medjnoune* v. *Algeria*, Views adopted on 14 July 2006, para. 8.3, and No. 1804/2008, *Il Khwildy* v. *Libya*, Views adopted on 1 November 2012, para. 7.2;

[8] See, inter alia, communication No. 1776/2008, *Bashasha and Bashasha* v. *Libyan Arab Jamahiriya*, Views adopted on 20 October 2010, para. 7.2.

[9] See, inter alia, communication No. 1225/2003, *Eshonov* v. *Russian Federation*, Views adopted on 22 July 2010, para. 9.8; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18.

any pertinent explanation from the State party, the Committee decides to give due weight to the author's allegations. Accordingly, it concludes that the author's rights under article 9, paragraph 1, of the Covenant were also violated.

8.7 Having come to a conclusion regarding violation of the author's rights under article 7 of the Covenant, the Committee decides not examine his claims under article 10, paragraph 1, separately.

8.8 The Committee finally notes that the author's allegations that he was denied his right to see his family and relatives while in prison or to exchange correspondence with them. The Committee recalls its jurisprudence whereby it states that prisoners shall be allowed under necessary supervision to correspond with their families and reputable friends on a regular basis without interference,[10] as stipulated in the United Nations Standard Minimum Rules for the Treatment of Prisoners[11] which also provides for communication "both by correspondence and by receiving visits" (see rule 37). Noting that the State party has not specifically refuted the author's allegations regarding his first two years of imprisonment, the Committee concludes that the facts, as submitted by the author, reveal a violation of the author's rights under article 17, paragraph 1, of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 7; article 9, paragraph 1; article 14, paragraph 3 (g); and article 17, paragraph 1, of the International Covenant on Civil and Political Rights.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide Sapardurdy Khadzhiev with an effective remedy by, inter alia: (a) conducting a thorough and effective investigation into his pretrial detention and subsequent imprisonment; (b) providing him with detailed information on the results of the investigation; (c) prosecuting, trying and, if confirmed, punishing those responsible for the violations committed; and (d) providing adequate reparation including compensation to the author for the violations suffered. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated.

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[10] See communication No. 74/1980, *Estrella* v. *Uruguay*, Views adopted on 29 March 1983, para. 9.2.

[11] Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva, Switzerland, in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957, and 2076 (LXII) of 13 May 1977.